



STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
869 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813-5097

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IN REPLY REFER TO:

Board of Land and  
Natural Resources  
State of Hawaii  
Honolulu, Hawaii

OAHU

CANCELLATION OF AMENDMENT TO HARBOR LEASE NO. H-87-30  
LESSEE: HAWAII MARITIME CENTER, FAST AND SUBMERGED LAND  
AT, IN VICINITY OF OR ADJACENT TO PIER 7, WAIKAHALULU, HONOLULU  
HARBOR, HONOLULU, ISLAND OF OAHU, TAX MAP KEY: 1<sup>st</sup> Div., 2-1-01:58

LEGAL REFERENCE:

Section 171-36, Hawaii Revised Statutes

LESSEE:

HAWAII MARITIME CENTER, a Hawaii non-profit organization

LOCATION AND TAX MAP KEY:

Portion of State-owned, fast and submerged lands located at, in the vicinity of and/or adjacent to Pier 7, Waikahalulu, Honolulu Harbor, Honolulu, Oahu; further identified by Tax Map Key No.: 1<sup>st</sup> Div./2-1-01:58, as shown delineated on the attached map labeled Exhibit "A."

FAST AND SUBMERGED LAND AREAS:

Fast Land Areas:

Parcel 1A: 4,535 square feet of land, as shown on Exhibit "A," for non-exclusive use landscaping by Lessee, vehicular access by the U.S. Coast Guard for the maintenance, installation and servicing of its existing range light and as a turn around area for emergency vehicles.

ITEM M-1

Parcel 1B: 12,100 square feet of land, as shown on Exhibit "A," for exclusive use by Lessee for the construction of museum building and related facilities including the improvements to be known as "Kalakaua Boat House" as depicted in the plans and specifications prepared by Philip K. White and Duane L. Cobeen and Associates, Inc., dated March 9, 1987, approved by the Harbors Division, Department of Transportation, State of Hawaii, on May 18, 1987, as may be revised from time to time with the written approval of Lessor.

Parcel 1C: 2,790 square feet of land, as shown on Exhibit "A," for exclusive use by Lessee for landscaping and for the main public entrance to the improvements.

Parcel 1D: 8,250 square feet of land, as shown on Exhibit "A," for non-exclusive use for a loading zone area, parking for handicapped visitors of Lessee, vehicular access for the U.S. Coast Guard for the maintenance of its range light within Parcel 1A, emergency vehicle access, pedestrian access, service vehicle access for cruise boat operations conducted from Parcel 1E, and access for vehicles of Lessor required in the maintenance, repair, etc. of Parcel 1E. Parking of vehicles within the parcel other than those aforementioned is prohibited.

Parcel 1F: 2,660 square feet of land, as shown on Exhibit "A," for non-exclusive use for U.S. Coast Guard vehicles, emergency vehicles, service vehicles for cruise boats utilizing Parcel 1F, access for vehicles of Lessor required in the maintenance, repair, etc. of Parcel 1F and pedestrian access.

Submerged Land Area:

Parcels II, IIA, IIB & IIC: 42,867 square feet of submerged land, as shown on Exhibit "A," for the mooring of the National Historic Landmark and Vessel, "Falls of Clyde" on the water column.

ZONING:

Fast Land:

State Land Use Commission:	Urban District
City and County of Honolulu:	Aloha Tower Development Corporation

Submerged Land:

State Land Use Commission:	Conservation District
City and County of Honolulu:	P-1 (Preservation)

LAND TITLE STATUS:

Subsection 5(a) land of the Hawaii Admission Act, non-ceded.

STATUS:

Fast and submerged land presently set aside to and under the control and management of the Department of Transportation, Harbors Division, for maritime and maritime-related purposes under Governor's Executive Order No. 3542.

CHARACTER OF USE:

Non-profit maritime center to develop a broad based community educational program; to develop awareness of marine and maritime activities; to promote ocean-related opportunities for the people of Hawaii and to preserve Hawaii's ocean heritage. The activities are to be carried out, in part, through shoreside museum contained in the improvements, and other facilities, floating museum facilities, and other related facilities, and through activities conducted or organized in the improvements and other shoreside facilities. The LESSEE shall be allowed to operate a gift shop, a restaurant and bar within the Improvements and other facilities which may be built.

TERM OF LEASE:

Sixty-five (65) years, commencing June 1, 1988 up to and including May 31, 2053.

CURRENT RENTAL:

Minimum Rent of \$18,140.00 per annum, or 2% of the first \$1,000,000.00 of the gross receipts, 3% of the gross receipts over \$1,000,000.00 up to and including \$1,500,000.00, 4% of the gross receipts over \$1,500,000.00 up to and including \$2,500,000.00, 5% of the gross receipts over \$2,500,000.00 up to and including \$3,500,000.00, and 6% of the gross receipts in excess of \$3,500,000.00, whichever is greater.

REMARKS:

At its meeting held on October 24, 1986, under agenda Item J-6, the Land Board authorized the Department of Transportation ("DOT") to issue a directly negotiated lease, now known as Harbor Lease No. H-87-30 ("Lease"), dated June 1, 1988, to the Hawaii Maritime Center, as "Lessee" ("HMC").

On October 4, 1990, the Lease was amended by way of Amendment of Harbor Lease No. H-87-30 to include an additional 42,867 square feet of submerged land at gratis rental for the historic sailing vessel "Falls of Clyde," as a result of Governor's approval and Legislative authority granted by concurrent resolution of the 1988 Hawaii State Legislature at its regular session.

On February 26, 1993, under agenda Item K-3, the Land Board approved a Second Amendment to Harbor Lease No. H-87-30, dated September 28, 1993, which exempted museum admission charges and gift shop sales from the percentage rental provision contained in the Lease.

At its meeting held on January 10, 1993, under agenda Item M-2, the Land Board approved a Third Amendment to Harbor Lease No. H-87-30, dated June 1, 1993, which in effect set the current percentage sliding scale for Lease percentage rental obligations for a twenty-year period and incorporated the current DOT assignment and subleasing policies into the Lease.

On June 9, 2005, under agenda Item M-2, the Land Board consented to a Fourth Amendment to Harbor Lease No. H-87-30, dated June 24, 2005, which Lease amendment allowed for the re-configuration of: (a) Lease Parcel 1A to be approximately 1,290 square feet; and (b) Lease Parcel 1B to be approximately 15,345 square feet.

Finally, at its meeting held on July 8, 2005, under agenda Item M-1, the Land Board approved a Fifth Amendment to Harbor Lease No. H-87-30, dated August 11, 2005, wherein the DOT and the Bishop Museum, for and on behalf of HMC, agreed to modify the subsequent dates of Lease rental re-openings as follows: (a) next rent reopening date: June 1, 2010 instead of the next scheduled rent re-opening date of June 1, 2013; and (b) subsequent Lease rent re-opening dates to occur at subsequent 10-year intervals from June 1, 2010. Additionally, the Fifth Amendment further set forth that independent appraisals to establish minimum annual Lease rental values in the future must adhere to specific appraisal requirements if the restaurant portion of the leasehold was subleased for a restaurant/food service operation.

The National Historic Landmark and Vessel, "Falls of Clyde," the last iron-hulled, four-masted sailing ship in existence, was given to the Bishop Museum in 1968 and then transferred to its affiliate, Hawaii Maritime Center, in 1988. Since, the completion of the Hawaii Maritime Center complex around 1990, the "Falls of Clyde" has been moored alongside the west or Ewa-side of Pier 7 in Honolulu Harbor.

In late September 2008, ownership of the "Falls of Clyde" was transferred from the Bishop Museum to the Friends of the Falls of Clyde, a Hawaii non-profit and U.S. Internal Revenue Service-recognized 501(c)(3) non-profit organization.

By way of a letter dated January 23, 2009, Mr. Blair D. Collis, Senior Vice President and Chief Operating Officer for the Bishop Museum, informed the Harbors Division that the Board of Directors of both the Bishop Museum and Hawaii Maritime Center voted unanimously in favor of authorizing its management to work with the Harbors Division on the immediate surrender by the Hawaii Maritime Museum to DOT Harbors Division of approximately 42,867 square feet of submerged land, designated and identified as Parcels II, IIA, IIB and IIC and cross-hatched on the attached map labeled Exhibit "A". The aforementioned submerged land area where the vessel, "Falls of Clyde" is presently moored is presently demised to HMC by way of Amendment of Harbor Lease No. H-87-30, dated October 4, 1990.

RECOMMENDATION:

That the Board authorizes the Department of Transportation, as "Lessor," to enter into and execute a Cancellation of Amendment to Harbor Lease No. H-87-30, 1990, with Hawaii Maritime Center, as "Lessee," subject to the following terms and conditions:

1. Prior to the formal execution of the Cancellation of Amendment to Harbor Lease No. H-87-30 document, the Friends of the Falls of Clyde ("Friends") must:
  - a. Deliver to the DOT Harbors Division, insurance policy or policies, or certificate of insurance(s) in lieu thereof, evidencing that Friends have, at their sole cost and expense, obtained from an insurance company or surety company authorized and licensed to do business in the State of Hawaii or approved in writing by the Director of Transportation, the following types of insurance covering the vessel "Falls of Clyde":
    - (1) Commercial General Liability Insurance, with a combined single limit of not less than \$1,000,000.00 for bodily injury and damage to property each occurrence and \$2,000,000.00 aggregate;
    - (2) Port Risk Hull & Machinery Insurance and Protection & Indemnity Insurance, with a combined single limit of not less than \$5,000,000.00 each occurrence; and,
    - (3) Comprehensive Hazardous Substance Liability and Property Damage Insurance with a combined single limit of not less than \$1,000,000.00 each occurrence and \$2,000,000.00 aggregate. Said policy of insurance shall provide coverage for personal injury and damage to

property caused by hazardous substances or any occurrence that may constitute a violation of any environmental law by the Friends or the DOT Harbors Division.

The foregoing types of insurance shall (a) name the State of Hawaii, Department of Transportation, as an additional insured; (b) provide that the Department of Transportation shall be notified at least ninety (90) calendar days prior to any termination, cancellation or material change in any insurance coverage; (d) cover all injuries, losses or damages arising from, growing out of or caused by any acts or omissions of the Friends, its officers, agents, employees, invitees or licensees, in connection with the Friends use or occupancy of the Premises; and (e) be maintained and kept in full force and effect at the Friends' sole cost and expense throughout the length of time that the vessel "Falls of Clyde" is moored at Pier 7, Honolulu Harbor, evidenced by furnishing the DOT Harbors Division, without notice or demand, a like certificate of insurance(s) upon each renewal thereof.

- b. Enter into and execute a month-to-month revocable permit at gratis rent with the DOT Harbors Division formalizing the vessel "Falls of Clyde's" right to be moored or berthed at Pier 7, Honolulu Harbor.
2. Such terms and conditions as may be prescribed by the Harbors Administrator to best serve the interests of the State.

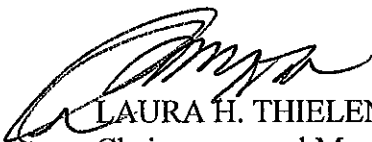
Respectfully submitted,



BRENNON T. MORIOKA, Ph.D., P.E.  
Director of Transportation

Attachment: Exhibit "A"

APPROVED FOR SUBMITTAL:



LAURA H. THIELEN  
Chairperson and Member

